

**KENTUCKY PERSONNEL BOARD
MINUTES OF MAY 6, 2019**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chair Haines on May 6, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Mark O. Haines, Vice Chair
Beverly H. Griffith, Member
William J. Byrley, Member
Catherine J. Monteiro, Member
Richard M. Waite II, Member
Tanya Lawrence, Member
Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Cynthia Perkins, Administrative Section Supervisor
Gwen McDonald, Administrative Specialist

Personnel Board absent:

Brian J. Crall, Chair

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD APRIL 12, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Vice Chair Haines asked for additions or corrections. Ms. Griffith moved to approve the minutes as submitted. Ms. Monteiro seconded and the motion carried 6-0. The Board members signed the minutes. (Vice Chair Haines voted.)

(Vice Chair Haines does not vote, unless noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek stated the written portions of the Little Sandy Correctional Complex Investigation were not complete, however, the investigative team would be showing the Board a PowerPoint presentation during this meeting on the question of whether there was sexual harassment at Little Sandy. The written materials would be completed shortly and sent to the

Board and parties within the next week. This report will be on the Board's agenda for June for final action.

Mr. Sipek announced the Court of Appeals upheld the Board's decision in the matter of Perry Puckett v. Cabinet for Health and Family Services. This decision may not be the end of the litigation in this matter.

4. REPORT OF THE PERSONNEL CABINET

Rosemary Holbrook, General Counsel, and Alaina Myers, Deputy Commissioner of the Department of Human Resource Administration, were present for the Personnel Cabinet. Ms. Holbrook stated this was Public Service Recognition Week with many events planned for state employees, including a Thank You message from Governor Bevin on Facebook and Twitter. Secretary Stephens has also sent out recognition badges to all state employees in My Purpose.

Ms. Holbrook noted the Commonwealth is transitioning to electronic performance evaluations beginning January 1, 2020. She then reviewed a proposed regulation amendment and a new administrative regulation which would effectuate the change to the evaluation system.

A. Amendment to Regulation:

101 KAR 2:180 – Employee performance evaluation system.

B. New Administrative Regulation:

101 KAR 2:190 – Employee performance management system.

Mr. Waite moved to approve the regulations as amended by the Personnel Cabinet. Mr. Byrley seconded and the motion carried 6-0. (Vice Chair Haines voted.)

5. ORAL ARGUMENTS

A. Paula Wade v. Education and Workforce Development Cabinet (2018-032)

Present for oral arguments were counsel for the Appellant, the Hon. Steven Bolton, and counsel for the Appellee, the Hon. Tess Russell.

**B. Leslie Glass v. Department of Military Affairs (2018-031 and 2018-076)
(2 Appeals)**

Present for oral arguments were counsel for the Appellant, the Hon. Paul Fauri, and counsel for the Appellee, the Hon. Charla Sands.

**6. INVESTIGATION
LITTLE SANDY CORRECTIONAL COMPLEX (LSCC)**

On December 11, 2017, Personnel Cabinet Secretary Thomas Stephens asked the Board to look into allegations of sexual harassment at LSCC occurring during 2013 and 2014. The investigation concerned two questions: (1) Did sexual harassment occur at LSCC (i.e., did Stephen Harper subject female coworkers to sexual harassment)? And (2) was the Department of Corrections' response to the sexual harassment allegations legally sufficient and does Corrections' handling of those allegations present learning opportunities for other agencies?

A PowerPoint presentation was shown to the Board that summarized the investigative team's findings about sexual harassment at LSCC. The presentation included testimony from the complainants, the now-retired Warden of LSCC, and the alleged harasser. Mr. Sipek narrated the presentation, incorporating pertinent findings into his discussion. A total of 53 witnesses were interviewed, during 62 separate interviews. The investigative team consisted of Mark A. Sipek, Tanya Lawrence, Katie Monteiro, and Stafford Easterling. Mr. Easterling did not participate in the interview process, but was invaluable to the team for background research as well as review of the report and interview summaries. Also, the Hon. Edward Baylous and Ms. Elisha Mahoney provided extensive documentation and information for the investigators to review during this process.

The report by the investigator will be presented to the Board and the parties for their review sometime following the May Board meeting, with the parties having a chance to respond to the findings prior to the June Board meeting.

7. CLOSED SESSION/RETURN TO OPEN SESSION

Ms. Monteiro moved that the Board go into Executive Session for the purposes of discussing complaints, and deliberations regarding individual adjudications. Ms. Lawrence seconded. Vice Chair Haines stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be

deliberations regarding individual adjudications as listed on the Board's Agenda for today's meeting.] (12:17 p.m.)

Mr. Byrley moved to return to open session. Ms. Monteiro seconded and the motion passed by acclamation. (1:50 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

A. Paula Wade v. Education and Workforce Development Cabinet (2018-032)

Mr. Byrley moved to defer this matter to the next Board meeting. Ms. Monteiro seconded and the motion carried 4-0. Ms. Lawrence recused.

**B. Leslie Glass v. Department of Military Affairs (2018-031 and 2018-076)
(2 Appeals) Moved from April**

Mr. Byrley, having considered the record, including Appellant's exceptions, Appellee's exceptions, and oral arguments, moved to accept the recommended order sustaining the appeals to the extent therein. Ms. Griffith seconded and the motion carried 4-1. Mr. Waite opposed.

C. Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals) Deferred from April

D. Thomas Blackwell v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-041) Deferred from April

E. Danielle Hawkins v. Tourism, Arts and Heritage Cabinet/Fish & Wildlife Resources (2016-049) Deferred from April

Mr. Byrley moved to defer Items C, D, and E. Ms. Griffith seconded and the motion carried 4-0. Mr. Waite abstained.

F. Joe Miller v. Justice and Public Safety Cabinet/Corrections (2017-157) Deferred from April

Mr. Waite, having considered the record, including Appellee's exceptions, and Appellant's exceptions, moved to accept the final order dismissing the appeal, as attached to the minutes. Ms. Monteiro seconded and the motion carried 5-0.

G. Donna Cox v. Department of Veterans Affairs (2018-224)

Ms. Monteiro, having considered the record, moved to accept the recommended order sustaining the appeal to the extent therein. Ms. Lawrence seconded and the motion carried 5-0.

H. Jonathan Grimes v. Finance and Administration Cabinet (2018-220)

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffith seconded and the motion carried 5-0.

I. Kevin Lewis v. Justice and Public Safety Cabinet/Corrections and Personnel Cabinet (2018-229)

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 4-0, with Ms. Lawrence abstaining.

J. Charles Phillips v. Tourism, Arts and Heritage Cabinet/Fish & Wildlife Resources (2018-161)

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffith seconded and the motion carried 4-0, with Mr. Waite abstaining.

K. Robert Yates v. Transportation Cabinet (2017-203)

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 5-0.

L. Amber Rhodes v. Transportation Cabinet and David Smith (2018-118)

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

- M. **Quinton Hall v. Transportation Cabinet (2019-018)**
- N. **Kevin Hays v. Labor Cabinet (2018-252 & 2018-253) (2 appeals)**
- O. **Robert Yates v. Transportation Cabinet (2017-196)**

Ms. Griffith moved to accept the recommended order and to dismiss the appeals for failure to timely prosecute the appeals. Mr. Waite seconded and the motion carried 5-0.

9. WITHDRAWALS

Ms. Monteiro moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Mr. Waite seconded and the motion carried 5-0.

- A. **Taylor Danielle Gross v. Justice and Public Safety Cabinet/Corrections (2019-017)**
- B. **Catherine “Paige” Dowell v. Cabinet for Health and Family Services (2019-025)**
- C. **Melissa Layman v. Tourism, Arts and Heritage Cabinet/Parks (2019-043)**
- D. **Shalonda Meaux v. Finance and Administration Cabinet (2017-081 & 2017-216) (2 appeals)**
- E. **Vicki Sanderson v. Department of Military Affairs (2018-221)**
- F. **Roger Kerns v. Department of Education and Personnel Cabinet (2019-077)**

10. SETTLEMENTS

Mr. Waite moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Griffith seconded and the motion carried 6-0.

- A. **Gary N. Honeycutt v. Energy and Environment Cabinet (2018-236)**
- B. **Allyson Rainwater v. Justice and Public Safety Cabinet/Corrections (2018-231) (Mediation)**

11. SECOND CLOSED SESSION

Mr. Sipek stated there was one more matter for the Board to discuss, and it would need to be discussed in closed session. Ms. Monteiro moved the Board go into closed session. Mr. Waite seconded. Vice Chair Haines stated that a motion had been made and seconded for the Personnel

Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because the Board will also consider matters mandated by KRS 11A.080 and KRS 11A.110(1) to be kept confidential, which comports with the exception found in KRS 61.810(1)(k).] (1:55 p.m.)

Ms. Monteiro moved to return to open session. Ms. Lawrence seconded and the motion carried 5-0. (2:08 p.m.)

Mr. Waite moved to further expand the scope of Investigation No. 2018-002 as warranted. Mr. Byrley seconded and the motion carried 6-0. (Vice Chair Haines voted.)

12. **OTHER**


There being no further business, Mr. Waite moved to adjourn. Ms. Monteiro seconded, and the motion passed by acclamation. (2:10 p.m.)

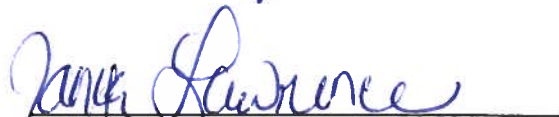

Mark O. Haines, Vice Chair


Beverly Griffith, Member


William J. Byrley, Member


Catherine J. Monteiro, Member


Richard M. Waite II, Member


Tanya Lawrence, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-157**

JOE MILLER

APPELLANT

**VS. FINAL ORDER ALTERING THE HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS
DIVISION OF PROBATION AND PAROLE**

APPELLEE

* * * * *

The Board, at its regular May 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 13, 2019, Appellant's Exceptions, Appellee's Exceptions, Board-Ordered Oral Arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Findings of Fact paragraphs 3, 4, and 5, and substitute the following:

3. On June 19, 2017, the Appellant, who was serving as a Probation and Parole Officer I, requested he receive any and all salary improvements to which he is entitled under KRS 196.076. The Appellant stated he had in excess of 15 years' experience as a Probation and Parole Officer, and his last four performance evaluations indicated a favorable performance rating. He also requested he be reclassified as a Probation and Parole Officer III. He requested that all amendments to his salary be retroactive to his starting date of June 16, 2016.

4. In making this determination, the Appellant was given credit for his pre-retirement service as a Probation and Parole Officer. The Appellant's request was denied because he had received his 5-year career ladder on August 1, 1994; his 10-year career ladder on August 1, 1999; and his 15-year career ladder on August 1, 2004. Therefore, it was determined that he was not eligible for the Probation and Parole Career Ladder again.

5. Appellant submitted a timely appeal, which was received on July 24, 2017.

B. Delete Conclusions of Law and substitute the following:

1. The Hearing Officer concludes as a matter of law that the plain reading of KRS 196.076 simply refers to service and does not differentiate between service that occurred pre-retirement or post-retirement.

2. The Board concludes as a matter of law that the Appellant is not entitled to a salary increase based on the Probation and Parole Officer's salary improvement program, as outlined in KRS 196.076. At the time of his request, the Appellant had 20 years of service as a Probation and Parole Officer and was a Probation and Parole Officer I. He was seeking to be reclassified as a Probation and Parole Officer III. Only a Probation and Parole Officer IV is entitled to a salary increase under this program with 15 or more years of service.

3. In addition, the Appellant had already received his 5-year, 10-year, and 15-year career ladder salary increases. There is nothing in the statute which allows for an employee to receive any of these increases a second time.

4. This conclusion is consistent with the Board's decision in *Richard A. Gray v. Justice and Public Safety Cabinet, Department of Corrections and Personnel Cabinet*, Appeal No. 2015-024. In the *Gray* case, the Board held that KRS 196.076 refers to service and includes service that occurs pre-retirement and post-retirement. Nothing in the *Gray* decision allows an individual to receive any of the career ladder increases a second time.

C. **Delete** the Recommended Order and substitute the following:

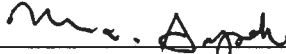
IT IS HEREBY ORDERED that the appeal of **JOE MILLER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, DIVISION OF PROBATION AND PAROLE (APPEAL NO. 2017-157)** is **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered be, and they are approved, adopted, and incorporated herein by reference as a part of this Order, and Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 7th day of May, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:
Hon. Angela Cordery
Hon. David Fuller
Mr. Rodney E. Moore